

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

For Online Publication Only

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BRIAN COLE,

Plaintiff,

-against-

COUNTY OF SUFFOLK, SUFFOLK  
COUNTY POLICE DEPARTMENT,  
SCPD OFFICER SEAN McAULIFFE and  
SCPD OFFICER MICHAEL J. CAFARELLA

**ORDER**

15-CV-5550 (JMA)(GRB)

Defendants.

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**AZRACK, United States District Judge:**

On September 29, 2015, plaintiff Brian Cole filed a complaint against defendants, alleging claims for false arrest, malicious prosecution and failure to provide adequate medical care, stemming from an August 18, 2013 incident. On October 12, 2016, plaintiff amended the complaint to add what appears to be a Monell claim. (ECF No. 20.) A second amended complaint was filed on April 14, 2017, which included one or more state law causes of action arising from the same facts. (ECF No. 37.) Following discovery, the parties filed cross-motions for summary judgment. On May 11, 2018, I referred these motions to Magistrate Judge Gary R. Brown for a Report and Recommendation (R&R).

On August 7, 2018, Judge Brown issued an R&R recommending that defendants' motion for summary judgment be granted in all respects and that plaintiff's motion for summary judgment be denied. (ECF No. 53.)

On August 24, 2018, plaintiff filed objections to Judge Brown's R&R, arguing that Judge Brown erred: (1) in finding that plaintiff did not submit a counter-Rule 56 statement of facts; (2)

when he determined the existence of probable cause for plaintiff's arrest and subsequent prosecution; (3) in not permitting plaintiff's claim for denial of medical care to go forward based upon plaintiff's allegation that he informed the officers of his back issues and need for medication; (4) in determining that plaintiff's malicious prosecution claim failed even though plaintiff's criminal charge was favorably terminated; (5) in finding that there was no evidence of a municipal custom or policy to support a Monell claim against Suffolk County; and (6) in finding that plaintiff's state law claims were precluded. On September 7, 2018 defendants filed their opposition to plaintiff's objections. Having conducted a review of the full record and the applicable law, I adopt Judge Brown's R&R in its entirety as the opinion of the Court.

In reviewing a magistrate judge's report and recommendation, the court must "make a de novo determination of those portions of the report or . . . recommendations to which objection[s][are] made." 28 U.S.C. § 636(b)(1)(C); see also Brown v. Ebert, No. 05-CV-5579, 2006 WL 3851152, at \*2 (S.D.N.Y. Dec. 29, 2006). The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Those portions of a report and recommendation to which there is no specific reasoned objection are reviewed for clear error. See Pall Corp. v. Entegris, Inc., 249 F.R.D. 48, 51 (E.D.N.Y. 2008).

I have undertaken a de novo review of the record, the R&R, the instant objections and opposition to those objections and agree with Judge Brown's comprehensive and well-reasoned R&R and accept it as the opinion of the Court. Accordingly, I grant defendants' motion for summary judgement in all respects and deny plaintiff's motion for summary judgment.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and, therefore, in forma pauperis status is denied for the purpose

of any appeal. See Coppededge v. United States, 369 U.S. 438, 444–45 (1962). The Clerk of Court is directed to mail a copy of this Order to the pro se plaintiff and to close this case.

**SO ORDERED.**

Date: September 11, 2018  
Central Islip, New York

/s/ (JMA)  
Joan M. Azrack  
United States District Judge